

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

LOCAL 689, AMALGAMATED	}	
TRANSIT UNION,	}	
Plaintiff,	}	Case No. <u>1:17-cv-01448</u>
	}	
v.	}	COMPLAINT AND MOTION TO
	}	COMPEL ARBITRATION
	}	
WASHINGTON METROPOLITAN AREA	}	
TRANSIT AUTHORITY,	}	
	}	
Defendant.	}	
	}	

COMPLAINT AND MOTION TO COMPEL ARBITRATION

Plaintiff Union, Local 689, Amalgamated Transit Union, now brings this action to compel arbitration. For the reasons which follow, this dispute is urgent to assist the parties in prompt resolution of an ongoing labor dispute over the discharge of approximately 20 Union members.

JURISDICTION

1. Original jurisdiction of civil disputes in which WMATA is a party lies in the United States District Courts, WMATA Compact Va. Code §33.2-3100(81) (Adopted by Congress as P.L. 89-774). The Plaintiff Local 689, ATU (the “Union” or “Local 689”) represents many employees of WMATA who perform work all over the transit system

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including in Virginia, thus supporting venue in this Court. Finally, this action is delimited by the provisions of the United States Arbitration Act, 9 U.S.C. Section 9, and the Virginia Uniform Arbitration Act (VUAA), Va. Code Chapter 21, Article 2. (Compact Sections Attached, Complaint Exhibit A)

The Parties

2. Plaintiff Local 689, Amalgamated Transit Union, represents in collective bargaining operators, mechanics and many clerical workers, comprising a majority of those employed by the Defendant Washington Metropolitan Area Transit Authority. Local 689 has represented such workers since the inception of WMATA in 1973 and those of predecessor transit operators in the Washington, D.C. area, continuously for over 80 years. The Union's offices are located at 2701 Whitney Place, Forestville, MD 20747.
3. Defendant Washington Metropolitan Area Transit Authority ("WMATA") is political subdivision of the District of Columbia, Commonwealth of Virginia and the State of Maryland, created by legislative compact among those jurisdictions and by the United States of America to provide mass transportation services to citizens who travel within and among all three jurisdictions. WMATA owns and operates Metrobus, Metrorail and MetroAccess transportation systems (MetroAccess service operated through contracts with various private companies) and has the capacity to sue and be sued. WMATA labor relations are authorized and depicted in Section 66 of the Compact, Va. Code §33.2-3100(81). WMATA's principal office is located at 600 5th Street, NW, Washington, DC, 20001.

The Parties' Relationships

4. Local 689, ATU constitutes an “accredited representative” under Compact Section 66 (b), of a majority of WMATA employees who work in a wide variety of non-supervisory occupations, including but not limited to operators and mechanics on WMATA’s bus and subway transportation systems.
5. Local 689, ATU and WMATA are parties to a comprehensive collective bargaining agreement which is currently open for re-negotiation but binding upon the parties pending revision or renewal.
6. All “labor disputes,” as defined by the WMATA Compact Section 66 (c) which cannot be resolved through collective bargaining are subject to binding arbitration by a tripartite board of arbitrators, as described in that section. (Section 66(c) is Exhibit A)
7. All “questions and grievances” which arise between the parties during the term of the existing collective bargaining agreement are subject to resolution through binding arbitration under Section 105 of the collective bargaining agreement. (Exhibit B)

The Current Dispute

8. John Evans served as a Track Walker or inspector for WMATA, until January 4, 2017 when he was discharged, allegedly as a result of an investigation from the previous year.
9. Within a few days, fifteen other Track Walkers or inspectors were also fired as a result of the same investigation.
10. Mr. Evans filed a grievance, processed by the Union on his behalf, which was eventually invoked into arbitration by the Union. (Exhibit C)

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11. Among other arguments on his behalf, Mr. Evans' grievance included the following paragraph:

This is a group grievance on behalf of trackwalkers discharged or suspended as a result of a report from Network Rail, including but not limited to Robert Bellamy, Glenn Proctor and Lawrence Simmons (note that other workers have been interviewed but not yet disciplined as a result of the report). The discipline was based on reports turned in by the grievant before June 1, 2016, yet the discipline did not occur until December 13 or later, well beyond the time limit allowed under Section 104(d). In addition, the reports filed were prepared consistently with the practice, understanding and training given to the Track Walkers to document their daily work. WMATA management has changed its approach to assignment and review of track inspection and is attempting to apply the new standards retroactively. In the process, WMATA is scapegoating these workers for insufficient track inspection which was intentionally designed by WMATA so as to avoid speed restrictions and immediate repair costs. The culture and practice in track inspection has been to file routine reports and to discourage reporting problems which might disrupt rail operation. Finally, the appropriate penalty for negligent or inadequate reporting would be progressive discipline, not immediate discharge. Therefore, each grievant should be reinstated (where necessary) and be made whole, including back-pay for the time lost from work.

12. A Board of Arbitration was empaneled for the grievance, consisting of Andrew Strongin, Chairman, John Flood, WMATA appointee and Douglas Taylor, Union appointee. Arbitration hearings were scheduled for three consecutive days, December 12, 13 and 14.
13. The parties agree that the Board of Arbitration has the authority to determine whether the discharge of John Evans was for "sufficient cause," (the contractual standard for discharge by WMATA) but when the Union moved under the above grievance language to present and arbitrate under the Evans case some 15 track walker discharges which occurred contemporaneously with that of Mr. Evans, (List presented by the Union, Exhibit D) WMATA responded as follows:

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And the Authority's position is, this decision on this motion is a matter of substantive arbitrability. And we don't believe that the compact, or the CBA grants the arbitrator the authority to render a decision on the Union's Motion. . . . Because at this point we don't feel that the Union's motion can be considered over our objection.

(Transcript of Proceedings, Exhibit E, pp. 50-51)

14. At the direction of the Board, the respective parties filed simultaneous memoranda on Friday, December 15, outlining their respective positions on the authority of the Board of Arbitration to conduct the proceeding as a group grievance, including the propriety of all 15 discharges. (Exhibit E, p. 63)
15. WMATA refused to proceed with evidence as to grievant Evans or any other Track Walker until the group grievance question was resolved; but persisted in its assertion that the Board of Arbitration did not have the authority to decide the questions of whether the Evans grievance was, in fact, a group grievance and whether the contract or compact precluded the Board from considering it. In short, WMATA refused to present substantive evidence or argument as to any aspect of the Evans case, including the question of whether to proceed as a group grievance, so long as the Union Motion to proceed as a group grievance was pending. (Exhibit E, p. 59)
16. By order dated December 20, the Board of Arbitration unanimously agreed to stay the arbitration proceedings for nine days, or until Friday, December 29, in order to allow one party or the other to bring an action in court on the matter. (Exhibit F)

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COUNT I - DEFENDANT WMATA REFUSES TO ARBITRATE
TO RESOLVE LABOR DISPUTES, IN VIOLATION OF CONTRACT SECTION 105

17. All allegations of paragraphs 1-16 are re-asserted as part of this Count.
18. Section 105 of the collective bargaining agreement between Local 689, ATU and WMATA includes the following:

Questions or grievances that cannot be amicably adjusted by said conferences shall be submitted to a Board of Arbitration . . . the findings of a majority of said Board of Arbitration shall be final and binding.
19. Section 105 of the collective bargaining agreement is lawful, as it is consistent with if not required by the Compact language on labor dispute resolution, Section 66 (c). (Exhibit A)
20. WMATA's refusal to submit the questions of whether John Evans' Grievance is a "group grievance," or not and, further, whether or not group grievances are prohibited under the collective bargaining agreement, violates Contract Section 105.

COUNT II - DEFENDANT WMATA REFUSES TO ARBITRATE
TO RESOLVE LABOR DISPUTES, IN VIOLATION OF COMPACT SECTION 66 (c)

21. All allegations of paragraphs 1-20 are re-asserted as part of this Count.
22. Defendant WMATA and its officials are governed by and obliged to implement the provisions of the Compact, including Section 66 (c), which requires, inter alia, "In case of any labor dispute involving the Authority and such employees where collective bargaining does not result in agreement, the Authority shall submit such dispute to arbitration...".

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23. By failing or refusing to submit the dispute to a Board of Arbitration, WMATA violates the express terms of the WMATA Compact.

COUNT III - THE VIOLATIONS OF CONTRACT AND LAW REQUIRE URGENT
ATTENTION, AS THEY DESTABILIZE THE PARTIES' LABOR RELATIONSHIP AND
CONCERN SAFE OPERATION OF WMATA'S RAIL SYSTEM

24. All allegations of paragraphs 1-23 are re-asserted as part of this Count.
25. During the course of the grievance procedure, WMATA has refused to answer Union questions regarding whether and who has replaced Mr. Evans and the other discharged Track Walkers following the discharges.
26. Track Walkers perform vital inspections of the condition of WMATA rail, ties, ballast and switches, the devices which carry subway cars, every day.
27. Reducing the work force of trained, experienced Track Walkers by any substantial number (in this case, 15) without replacing them, or replacing them with individuals who are not trained or experienced in evaluating WMATA track conditions, would make the rail system extremely unsafe, jeopardizing passengers and other WMATA employees during each day of operation.
28. In the course of the arbitration proceeding in this matter, the Union is asking the Board of Arbitration to restore the system to safe operation, particularly in light of WMATA's refusal to explain what measures, if any, it has taken to preserve thorough inspection of its rail and switch system.
29. Due to WMATA's refusal to participate in the arbitration proceedings, full examination of the Track Walkers' role in safe operation and evaluation of the extent to which safety has been compromised by their removal is delayed further.

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30. The Board of Arbitration has allowed only a short period of time (until December 29, see Exhibit F) for the parties to obtain court relief seen by WMATA as a predicate for further arbitration proceedings.
31. WMATA's disruption of the hearing has caused immediate and ongoing obstruction to a lawful arbitration proceeding, which is considering a matter of grave safety concern to WMATA workers (including those operating trains or working along the track) and to the riding public.
32. WMATA has not advanced, and cannot advance, any significant impediment to the jurisdiction of the Board of Arbitration to determine the nature and scope of the Evan's Grievance Arbitration.
33. Accordingly, the Plaintiff Union is likely to prevail on the merits and failure of the Board to proceed threatens to cause immediate, irreparable harm in the form of a train derailment.

Remedies

Based on the foregoing, the court should order without delay:

1. That the arbitration proceeding resume without further delay, and that the arbitrators should determine, among other issues, whether the John Evans grievance is a group grievance and, if so, whether there is any reason in contract or law to prohibit the Board of Arbitration from adjudicating the validity of discharges of the entire group.

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2. That WMATA reimburse the Union for the cost of bringing this action and the cost, if any incurred by the delay associated with WMATA's refusal to proceed in arbitration on December 12, 13 and 14 as scheduled.
3. Any further relief which the Court deems to be appropriate under the circumstances.

Defendant LOCAL 689,
AMALGAMATED TRANSIT UNION,
by its Counsel,

/s/ Douglas Taylor

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff ATU Complaint and Motion to Compel Arbitration, with Attachments, was served via email per agreement of the parties this 20th day of December, 2017 to:

Patricia Lee
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